**GOVT 2305  
The US Constitution**

The previous section covered the basis of governmental authority in the United States: The idea that individuals possess natural, or unalienable, rights and consent to a governing system in order to secure them.

It also detailed how, over Anglo-American history, the powers of government became separated into different institutions and the attempt to consolidate control of all aspects of governing power became seen as tyrannical.

Hopefully after reading through it, you have a better understanding of what exactly the Declaration of Independence says and why it says it. This gives us a greater appreciation for what the document was trying to accomplish.

Remember that it argued that the people have the right to abolish an existing system of government (for legitimate reasons), it also stated that once done, a new system of government must be established that will better secure the people’s “safety and happiness.”

This set of slides is about how this is best done. We will look at two attempts to do so.  
  
This is really an important, practical question. Once we establish what the rights of individuals are, and what the role of government ought to be, how do you design a system of government to achieve that end? It is a more difficult enterprise than simple stating that people have rights. How do you secure them?

What is preferable? A confederation, where all power rests with the states? A unitary system, where all power rests with the nation? Or some combination of the two (a federal system)?

This week we come to terms with the concept of a constitution and the basic purpose and design of the U.S. Constitution.   
  
We also will look at the Articles of Confederation and discuss the conflicts regarding the relative success of that document

We need to understand not only the basic design of each constitution, but the political forces and circumstances that shaped them.

This is the first of several sets of slides devoted to aspects of the U.S. Constitution. Here we discuss the background and structure of the document. After this one we will look separately at the defining principles within the document and the institutions it creates.

The principles we will look at are:   
  
Republicanism  
Separated Powers  
Federalism  
Individual Liberty

[Republicanism](http://en.wikipedia.org/wiki/Republicanism_in_the_United_States) – in other words: indirect democracy. This refers to the fact that the Constitution only allows the population to elect representatives who they can then hold accountable in periodic elections. This is designed to check the dangers alleged to be posed by direct democracy.

[Separated Powers](http://en.wikipedia.org/wiki/Separation_of_powers_under_the_United_States_Constitution) – The division of governmental power into three components (legislative, executive and judicial) and the vesting of those powers in three separate institutions. The separation is then reinforced with a system of [checks and balances](http://en.wikipedia.org/wiki/Separation_of_powers).

[Federalism](http://en.wikipedia.org/wiki/Federalism) – The division of sovereignty into national and state components as well as the division of functions to those levels, including the local level.

[Individual Liberty](http://en.wikipedia.org/wiki/Liberty) – This is a recognition that people have certain rights that are beyond the ability of government to limit. Certain aspects of human behavior judged to be basic human rights and power must be limited in order to secure them.

All four describe divisions created within the document. As we proceed we have to bear in mind that the constitution is very decentralized and power is distributed to many different entities and institutions.

Why is this important? These divisions make tyranny (concentrated power) less likely to occur. Unfortunately, it also makes governing very difficult.  
  
This is a concept we have discussed in class previously, but will now try to clarify.

First, a repetition:   
  
What is a [Constitution](http://en.wikipedia.org/wiki/Constitution)?  
  
A set of rules for a government that articulate its powers and functions, and establishes its institutions, principles, structures and procedures. It also establishes its relationship with the general population by clearly stating its limits and the rights of the people.

Stew on that for a minute or two.

A constitution is designed to provide some stability and predictability in how a society is governed. Without a constitution, rule scan be arbitrary and capricious.   
  
Tyrants dislike constitutions.

Constitutional governments are also referred to as limited governments since constitutions stipulate what government can and cannot do.

A constitution provides the basic law upon which a society chooses to govern itself.

It has less to do with the specific goals and objectives of the nation than creating a process that can best achieve those goal and objectives.

A constitution contains a country’s fundamental laws. Other laws are inferior to it and can be revoked if they are in conflict with [constitutional law](http://www.law.cornell.edu/wex/constitutional_law).   
  
This includes [statutory law](http://en.wikipedia.org/wiki/Statutory_law), [common law](http://en.wikipedia.org/wiki/Common_law), and [administrative law](http://en.wikipedia.org/wiki/Administrative_law).

A country’s constitution tends to reflect its values and goals, but also the political circumstances and problems it faced during its drafting, signing and ratification.

Constitutions can be very pragmatic documents, based as much on reality and experience as theory.

The composition of constitutions tends to be impacted by the events of the day.

From 1777 – 1781, the concern was the problem posed by strong central governments, like the British government. The Articles of Confederation did not have one as a result.

In 1787 the concern was the lack of a strong central government and the inability of the states to work together to solve mutual problems. The authors of the Constitution established a central executive in order to allow for the creation and imposition of national policies.

TO put this in greater context, let’s quickly look at predecessors to the U.S. Constitution.

While there are no direct connections between [the Constitution of the Roman Republic](http://en.wikipedia.org/wiki/Constitution_of_the_Roman_Republic) and what we have now, it’s worth looking through. Certain features that are central to our constitution can be found there – most notable separated powers.

[The British Constitution](http://en.wikipedia.org/wiki/Constitution_of_the_United_Kingdom)  
  
Unwritten, or at least not written as a single document, it is based on the institutions and powers which had evolved organically over British history.

As we know already, two historical documents are especially important   
  
[Magna Carta](http://en.wikipedia.org/wiki/Magna_Carta)  
[The English Bill of Rights](http://en.wikipedia.org/wiki/Bill_of_Rights_1689)

The Avalon Project has [a full list of documents](http://avalon.law.yale.edu/subject_menus/constpap.asp) which led to the Constitution.

Parts of each can be found in the current constitution.

**From the Magna Carta:   
  
38.** No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purposes.  
   
**39.** No freemen shall be taken or imprisoned or [disseised](http://avalon.law.yale.edu/medieval/magnadef.asp) or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.   
  
**40.** To no one will we sell, to no one will we refuse or delay, right or justice.

From the English Bill of Rights:  
  
- *the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;*   
  
- *levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;*   
  
- *it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;*   
  
- *the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law*

From the English Bill of Rights:  
  
- *the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;*   
  
- *the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;*   
  
- *excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;*

Aside from these isolated clauses was the general idea that a properly constructed constitution has to separate powers into distinct, independent and strong institutions – the three branches.

Also that taxation and military power must be based on the consent of the governed as expressed through the legislature.

The US Constitution was predated in the United States by a variety of state constitutions.   
  
These had been in place, in some cases, for over 100 years.

A charter is a bit like a constitution. It authorizes the establishment of a government and sets up its basic parameters.

The Avalon Project has a page with [links to all the colonial charters](http://avalon.law.yale.edu/subject_menus/statech.asp).  
  
[The Colonial Origins of the American Constitution](http://oll.libertyfund.org/index.php?option=com_content&task=view&id=455&Itemid=287).  
  
 [American Constitutional Thought: Colonial Charters and Early State Constitutions](http://www.publicaffairs.virginia.edu/drupal/politics/system/files/Flynn.pdf).

Prior to independence, the colonies were granted charters that authorized their existence and allowed them to establish governments. The earliest constitutions in the United States – or what would become the United States - were these charters.

The colonies each had a distinct identity. People were attached strongly to their colony, not to the group. This made union difficult. The colonies were jealous of their powers – this is a theme that would continue.   
  
There were failed attempts to establish a union, the most noteworthy was [The Albany Plan](http://en.wikipedia.org/wiki/Albany_Plan).

In 1754 representatives from seven colonies met in the [Albany Congress](http://en.wikipedia.org/wiki/Albany_Congress). Delegates from the various colonies met to discuss issues of mutual concern. These were primarily defensive in nature. The colonists were concerned about the encroachments of the French.

A [plan](http://avalon.law.yale.edu/18th_century/albany.asp) was written out by Benjamin Franklin and Thomas Hutchison allowing for the establishment of a Congress and a presidency, but it was rejected by the state legislatures and never sent to the British for consideration.

The design of the government was very similar to what would be created under the Articles of Confederation.

Recall that the Articles of Confederation was written in 1777 (ratified in 1781) by the same people that brought us the Declaration of Independence the year before. It fulfilled the promise in the declaration that a government would be established that was superior to what had been overthrown.

It is noted for not establishing any meaningful central authority, not surprising given the circumstances. The authors’ principle concern was to avoid concentrated national power. In short, they did not want another king. They also sought to establish autonomy from each other. The states wanted to retain sole possession of sovereignty.   
  
If the states agreed to a strong central authority then each state would have the ability to interfere with each other’s the internal decisions.

It is a [confederation](http://en.wikipedia.org/wiki/Confederation).  
  
The states ruled. The national government – to the extent it was a government – merely negotiated conflicts between the states. Even that powers was limited since there was no way to enforce national decisions, and no national court systems to provide a neutral forum to reconcile disputes between states.

Each state retained sole possession of sovereignty in that system. There was no sovereign power above the states. This was fine for state interests, but not for those interested in establishing national – commercial – enterprises (the Federalists).

Conflicts were addressed through occasional meetings – conferences or conventions – where representatives of states could work on issues of mutual concern.  
  
But these were informal and were not always effective. This lead some to argue that stronger, permanent, national institutions should be established to help facilitate this process.

The Articles established one national institution, and assembly (which isn’t really even granted legislative power) which was fully controlled by the states.  
  
No national executive could implement national laws. No national judiciary could adjudicate disputes between states.

As we will see, the supporters of state power would later oppose the ratification of the Constitution and some would eventually move west and support the development of state constitutions with greater popular participation.  
  
Texas included.

Let’s look over some key parts of the document.  
  
For online info:   
[The Text](http://avalon.law.yale.edu/18th_century/artconf.asp)  
[Wikipedia](http://en.wikipedia.org/wiki/Articles_of_Confederation)  
[Library of Congress](http://www.loc.gov/rr/program/bib/ourdocs/articles.html)

*The Preamble  
  
 To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.  
  
Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts-bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia*.

Notice that the full title of the document is:   
  
*The Articles of Confederation and perpetual Union*This matters, as we will see below.

This may seem mundane – but it is important to note that the preamble states that the nation rests on the authority of the states.   
  
We will contrast this below with the opening phrase in the Constitution: We the People.

*Article II. Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.  
  
Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.*

Sovereignty continues to rest with the state governments, which then enter into a “league of friendship” and “bind themselves” to work together.   
  
It does not clearly state that the United States is a nation with sovereignty. There was no enforcement mechanism mandating that they do so.

Article IV attempts to sort out the relationships between the states, but as with many of these articles, it is important to note that there is no enforcement mechanism in place to impose agreements or a judiciary to works through conflicts.

*Article V. For the most convenient management of the general interests of the united States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.*

*Article V (continued): No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind. Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.*

This is the closest the document gets to establishing an institution. Note that while it says that the states can send delegates to meet in Congress, it does not clearly grant legislative powers to the institution. It does not even give it a title. The Constitution will establish that the legislative power shall be vested in a Congress. This document simply refers to the “united States in congress assembled.”

Note that the delegates are severely restricted. They are appointed by the states, they serve one year terms, and they can be recalled and replaced at any time during the year.   
  
The delegates have no autonomy to make decisions on their own. The states controlled the Congress and could easily incapacitate it.

There is nothing in this Article which mandates that the Congress meet, and quite often it could not, which made the attempt to govern ineffective.

Many of the other articles placed limits on the powers of the states, but there was no effective mechanism in place to prevent them from stepping outside these boundaries.  
  
This was the consequence of not having a national executive branch to impose laws.

Article VI attempts to prevent the states from engaging in foreign affairs – but the need for each state to recognize treaties gave them an effective veto power over foreign affairs.

Article IX provides detail on the powers of the united States in congress assembled, but the implementation of the decisions of Congress often required unanimous support of the states – this was seldom achieved, nor can this generally be achieved. Each state had veto power.

Article XIII has two interesting components.

First, it established that the union is perpetual, it cannot be terminated. Recall the full title of the document alluded to above.   
  
This fact was alluded to in a Supreme Court decision – [Texas v. White](http://en.wikipedia.org/wiki/Texas_v._White) – which established that the southern states had never actually seceded from the union in the Civil War.

Second, it states that the Articles of Confederation cannot be altered unless the alteration is confirmed by the legislature of every state. As we will see, the Constitution states that it becomes effective upon the ratification in nine state conventions. This clearly violated the conditions in the Articles.

The national government under the Articles of Confederation was considered to be ineffective. It seemed to have not been designed well enough to fulfill the responsibility given to it in the Declaration of Independence.

This is subject to debate of course.   
  
Those with positions of power in each state, as well as those who had no interests beyond their states’ borders and identified closely with their state, had few problems with the document.

But the document was considered insufficient by those who had engaged in trade prior to the revolution. Commercial transactions – and the security apparatus necessary to facilitate them – were difficult to establish.   
  
This was the consequence of not having a national executive branch, and increasing calls were made to establish one.

This group would become known as the [Federalists](http://www.usconstitution.net/consttop_faf.html), and aside from being the driving force behind the drafting and ratification of the Constitution, these people would establish one of the [first two political parties](http://en.wikipedia.org/wiki/Federalist_Party).

Federalists wanted a national government that could establish a strong currency and an effective military, notably a navy, along with a government that had treaty making power.

These were all goods that the British government provided, but were impossible to reestablish under the Articles.

Federalists argued that the Articles of Confederation could not provide them. The system’s design was defective. The Anti-Federalists disagreed. They saw it as a power grab by the large scale merchants (the big business interests of the day).

One of the complaints made by the Federalists was that the Articles of Confederation suffered from an “[excess of democracy](http://lexrex.com/enlightened/AmericanIdeal/yardstick/demexcess.htm).”  
  
States tend to be more democratic - meaning direct democracy - than the national government.

State legislatures were passing legislation that, in the opinion of the Federalists, undermined the stability of the nation.   
  
But the states would argue that they were engaging in activities that benefitted the common person – the majority.

Debts were being abolished, property was being redistributed, and currency was being devalued in order to make debt easier to pay off. The Federalists argued that these policies weakened the nation’s financial power.  
  
Madison would specifically mention these as “wicked” projects in Federalist #10.

Here is a summary of some of the complaints of the government at the time (bear in mind that the Anti-Federalists argued against these points).

1 – There was no power to enforce the decisions made by Congress. This included the ability to fund a military, and to pay what was owed to the soldiers. Congress could not levy taxes, it could only request contributions from the states, and these could easily be ignored.

2 – The lack of a common army meant that each state was able to establish its own. With thirteen separate armies, there was no guarantee that they would not attack each other.

3 – States still had the ability to conduct their own trade policies, both domestically and internationally. As a result of the former, commercial transactions between the states was suppressed. Limits were placed on the commercial expansion. As a result of the latter, states could begin to make their own treaties – despite the fact that this was restricted officially. States could compete with each other for trade, which gave the competitive advantage to foreign nations.

4 – The nation was unable to establish a stable financial structure. The war debts were impossible to pay, which devalued the nation’s currency – it was untrustworthy. There was little reason for investors to have confidence in the nation and to purchase its bonds.

5 – Internal unrest – such as Shay’s Rebellion - was difficult to handle. One the one hand it was difficult to prevent unrest ahead of time, and in the second, to contain them once they emerged.

Attempts were made to – informally – reconcile disputes between the states. These were meeting composed of delegates from the states.

Commercial disputes were common.   
  
The [Mt. Vernon Conference](http://en.wikipedia.org/wiki/Mount_Vernon_Conference) was called to reconcile disputes over access to the Potomac River.

Later, [the Annapolis Convention](http://en.wikipedia.org/wiki/Annapolis_Convention_(1786)) was called to deal with general commercial disputes between the states, but not enough delegates showed up to take official action.

Two of the attendees of that convention, [Alexander Hamilton](http://en.wikipedia.org/wiki/Alexander_Hamilton) and [James Madison](http://en.wikipedia.org/wiki/James_Madison), organized an effort to get the states to send delegates to Philadelphia to consider improvements to the document. This would become the Constitutional Convention.

[From the report issued by the attendees](http://avalon.law.yale.edu/18th_century/annapoli.asp):   
  
*That there are important defects in the system of the Federal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probable, from the embarrassments which characterize the present State of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Council's of all the States.*

*Under this impression, Your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the union, if the States, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at* [*Philadelphia on the second Monday in May*](http://avalon.law.yale.edu/subject_menus/debcont.asp) *next, . . .*

*...to take into consideration the situation of the United States, to devise such* ***further provisions*** *as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress assembled, as when agreed to, by them, and afterwards* ***confirmed by the Legislatures of every State****, will effectually provide for the same.*

The meeting they requested would be [the Constitutional Convention](http://en.wikipedia.org/wiki/Philadelphia_Convention).  
  
Useful Wikipedia link: [History of the United States Constitution](http://en.wikipedia.org/wiki/History_of_the_United_States_Constitution).

As noted above, the convention, by the way, would violate both promises. The language was pulled from the Articles of Confederation.

1 – they would completely replace the articles with a new document.  
  
2 – state conventions, not legislatures, would determine whether to ratify the document.

Key Members of the Convention:   
  
Alexander Hamilton  
James Madison  
George Washington  
Robert Morris  
James Wilson  
Benjamin Franklin  
  
([Click here for a list of all the delegates](http://www.archives.gov/exhibits/charters/constitution_founding_fathers.html))

[Washington’s](http://en.wikipedia.org/wiki/George_Washington) participation was crucial since he was the was the only person all sides trusted. He had already ready defused the [Newburgh Conspiracy](http://en.wikipedia.org/wiki/Newburgh_conspiracy), and was being compared to the Roman General [Cincinnatus](http://en.wikipedia.org/wiki/Cincinnatus) who had resisted the temptation to become dictator.

He was sent a [letter](http://en.wikipedia.org/wiki/Newburgh_letter) by an [officer](http://en.wikipedia.org/wiki/Lewis_Nicola) proposing that he become king, but he [strongly refused](http://www.pbs.org/georgewashington/milestones/lewis_nicola_read.html).

This is an important point: If Washington wanted to become king after the war was over, he could have easily. But he resigned and went back to his farm.   
  
This showed personal virtue. He could control his ambitions. It meant that he could be trusted.

It was nice that [Benjamin Franklin](http://en.wikipedia.org/wiki/Benjamin_Franklin) was there also.  
  
He second in stature to Washington, bit too old to play any role in the new government.

Note: The group that met in Philadelphia to frame the Constitution were not the same as those who wrote the Declaration of Independence.

The members of the Second Continental Congress represented a broader segment of colonial society. They included the later Anti-Federalists.   
  
They were united when it came to independence, but would divide when the subject turned to how the nation would be governed.

Only these six people would sign both documents:  
  
[George Clymer](http://en.wikipedia.org/wiki/George_Clymer)  
[Benjamin Franklin](http://en.wikipedia.org/wiki/Benjamin_Franklin)  
[Robert Morris](http://en.wikipedia.org/wiki/Robert_Morris_(financier))  
[George Read](http://en.wikipedia.org/wiki/George_Read_(U.S._statesman))  
[Roger Sherman](http://en.wikipedia.org/wiki/Roger_Sherman)  
[James Wilson](http://en.wikipedia.org/wiki/James_Wilson)

The members of the Constitutional Convention were almost exclusively member of the commercial classes. These were the business owners, or those who supported the rise of a commercial republic.   
  
They saw their interests threatened by the design established in the Articles of Confederation.

The meeting was held in secret. While people knew what the delegates was up to – the proceedings were private. This was to allow members to speak candidly. Question: Was this a good idea? Would it be feasible today?  
  
For brief commentary read: [The Rule of Secrecy](http://teachingamericanhistory.org/convention/summary.html)

[TeachingAmericanHistory.org](http://teachingamericanhistory.org/convention/) has complete coverage of the proceedings of the convention.  
  
[Day by Day Summary](http://teachingamericanhistory.org/convention/summary.html)

Jams Madison took [comprehensive notes](http://avalon.law.yale.edu/subject_menus/debcont.asp) at the convention. These were not published until 50 years after ratification.

During the Annapolis Convention word broke out about a [debtors revolt in Massachusetts](http://en.wikipedia.org/wiki/Shays'_Rebellion) led by Daniel Shays. Fear of internal upheaval further convinced elites to push for a revision of the Articles of Confederation to create national power sufficient to quell such rebellions.

Note: The [Anti-Federalists](http://en.wikipedia.org/wiki/Anti-Federalism) would later argue that the story of the rebellion was inflated in order to stoke fear among the participants in order lead them to expedite the drafting of the document.

Since many of the delegates were known supporters of a stronger national government and proponents of commercial development, at the expense of the agricultural sector, opposition to the document developed.

[Patrick Henry](http://en.wikipedia.org/wiki/Patrick_Henry):   
  
 “I **smell a rat** in Philadelphia, tending toward **monarchy**”

Patrick Henry was an opponent of stronger national power and would become a leader of the [Anti-Federalists](http://en.wikipedia.org/wiki/Anti-Federalism). He would question by what authority the authors of the Constitution were able to claim that they spoke for “we the people.” The states, not the people sent the delegates to Philadelphia.

[Samuel Adams](http://en.wikipedia.org/wiki/Samuel_Adams) would also oppose the convention ([click here for others](http://en.wikipedia.org/wiki/Anti-Federalism)). He had no problems with the Articles.

General Points About the Convention:

* George Washington was the presiding officer.
* His participation was considered essential for the success of the convention
* The proceedings were held in secret in order to allow participants to speak freely.

- Madison's convention notes were not published for fifty years following the convention.

General Points About the Convention:

* In order to facilitate [ratification](http://en.wikipedia.org/wiki/Ratification_of_the_United_States_Constitution), only a super majority of states (9 out of 13) was required to ratify it. A key weakness of the Articles of Confederation was the requirement that certain decisions be made unanimously.

- Rhode Island did not send delegates, to the relief of many since they were felt likely to be disruptive, but eventually became the last state to ratify the document.

Three plans were introduced into the convention for consideration.  
  
First, the Virginia Plan, then in response, the New Jersey Plan, and as an alternative, Hamilton’s Plan.

The introduction of the Virginia Plan let members know that they were throwing out the Articles and starting from scratch.

Both the Hamilton and Virginia Plans proposed very strong national governments with weak states, the Hamilton Plan especially. The New Jersey Plan would have retained many of the characteristics of the Articles of Confederation.

The convention was to start on [May 14, 1787](http://teachingamericanhistory.org/convention/debates/0514.html), but a quorum was not reached until [May 25th](http://teachingamericanhistory.org/convention/debates/0514.html). On [May 29th](http://teachingamericanhistory.org/convention/debates/0529.html), William Randolph introduced the [Virginia Plan](http://www.usconstitution.net/plan_va.html), which James Madison had put together over the previous weeks.  
  
It has recently been discovered that [Charles Pinckney also submitted a plan](http://www.usconstitution.net/plan_pinck.html) that day.

In presenting the plan Pinckney provided a summary of the objections to the Articles and the objectives of the proposed system.

What must a constitution do?  
  
A national government “ought to secure 1. 7 against foreign invasion: 2.7 against dissentions between members of the Union, or seditions in particular states: 3. 7 to procure to the several States, various blessings, of which an isolated situation was incapable: 4.7, 8 to be able to defend itself against incroachment: & 5.7 to be paramount to the state constitutions.“ – From Madison’s notes.

He claimed that authors of the Articles did the best they could “in the then infancy of the science, of constitutions, & of confederacies,” but pointed out four deficiencies of the Articles:

(1) It provided no security against foreign invasion, (2) it could not check quarrels between the states, (3) the national government could not protect itself from encroachments from the states, and (4) the Articles were less important than state constitutions.

He submitted the Virginia Plan ([read the text here](http://avalon.law.yale.edu/18th_century/vatexta.asp)) which had been put together by James Madison.  
  
Neat trivia: Randolph would refuse to sign the eventual document because “the "Republican propositions" of the Virginia Plan had "much to his regret been widely, and in his opinion, irreconcilably departed from." But he would eventually support the Constitution’s ratification.

Here are key features of the document

- A bicameral legislature (two houses)  
- Both house's membership determined proportionately, based on state population.  
- The lower house was elected by the people.  
- The upper house was elected by the lower house.  
 - There would be national veto power over any state legislation.

- An executive would exist that would ensure the will of the legislature was carried out, and so was chosen by the legislature.  
- There would be a judiciary with life-terms of service.  
- The executive and some of the national judiciary would have the power to veto legislation, subject to override

Diagram of the Virginia Plan

This proposal demonstrated to the other delegates that some intended to rewrite the Constitution from scratch.   
  
And is was obvious that some wished to greatly enhance the power of the national government over the states.

This led to opposition, though it would take a while for the opposition to organize and produce a counter proposal.

In the meantime, debate over the Virginia Plan continued for several days, from [May 30 – June 13](http://teachingamericanhistory.org/convention/summary.html). Each of the 15 resolutions in the proposal were debated separately.

Smaller states were concerned that the increased power given to the national government would shift power to the larger states a the expense of the smaller states.

On [June 14](http://teachingamericanhistory.org/convention/debates/0614.html), a postponement was granted at the request of [William Paterson](http://en.wikipedia.org/wiki/William_Paterson_(judge)) of New Jersey, to allow for an alternative plan to be produced . On [June 15](http://teachingamericanhistory.org/convention/debates/0615.html), the New Jersey Plan was submitted.

[Click here for the plan](http://www.usconstitution.net/plan_nj.html).  
  
[Here’s the Wikipedia](The%20New%20Jersey%20Plan).

Diagram of the New Jersey Plan

A key feature of the plan was equal representation of each state. This was also a feature of the Articles of Confederation, but it allowed for the existence of a national executive and judiciary. The power to tax was expanded as well.

One major difference was that the executive branch – which was singular in the Virginia Plan – was plural. They served a single term and were subject to recall based on the request of state governors.

The plan was debated on [June 16](http://teachingamericanhistory.org/convention/debates/0616.html) and on [June 19](http://teachingamericanhistory.org/convention/debates/0619.html).

Patterson argued that the New Jersey Plan preserved the sovereignty of the states while the Virginia Plan destroyed it.  
  
James Madison led the push against it – which makes sense since he drafted the Virginia Plan.

On [June 18th](http://teachingamericanhistory.org/convention/debates/0618.html), Hamilton stunned the convention with a six hour speech proposing a far stronger national government that what was proposed in the Virginia Plan.  
  
It has also been called the [British Plan](http://www.usconstitution.net/plan_brit.html) because it contained elements that looked very monarchic.

Here’s the [text of the resolution Hamilton introduced](http://en.wikisource.org/wiki/Plan_of_Alexander_Hamilton_(NY)) that contained his plan.

[A summary of Hamilton’s Plan](http://www.usconstitution.net/plan_brit.html)

* A bicameral legislature
* The lower house, the Assembly, was elected by the people for three year terms
* The upper house, the Senate, elected by electors chosen by the people, and with a life-term of service
* An executive called the Governor, elected by electors and with a life-term of service

Hamilton’s Plan

- Also called the British Plan due to its similarity with the British system.

- The Governor had an absolute veto over bills

* A judiciary, with life-terms of service
* State governors appointed by the national legislature
* National veto power over any state legislation

Hamilton’s plan had no chance of passing, but it reflected one man’s opinions about how strong the national government ought to be.  
  
It is also thought by some that he presented this plan as a way to take heat off the Virginia Plan. It looked more moderate in comparison. Hamilton never spoke of his plan again and did not participate heavily in the convention after that. He would become very involved in the effort to see it ratified.

After these plans were introduced, debate centered on the design of each institution, their powers and other related matters.  
  
[Click here again](http://teachingamericanhistory.org/convention/summary.html) for full detail about each day’s activities. As there is too much to cover in detail here, we will cover some of the information later when it is relevant to the subject matter at hand.

A series of compromises were necessary to ensure acceptance of the document by a majority of the delegates.  
  
Let’s look at two  
- [The Great Compromise](http://en.wikipedia.org/wiki/Connecticut_Compromise).  
- [The 3/5ths Compromise](http://en.wikipedia.org/wiki/Three-Fifths_Compromise).

The first compromise settled two related questions. First, what was going to be represented in the legislature, and second, what was the relationship between the national and state governments?

The bicameral system creates a House that is connected to the general population, and a Senate that is connected to the states.

Proponents of a stronger national government wanted it to be based directly on the people (“We The People”) and by-pass the states.   
  
The Articles of Confederation was based on the states, not the people. This made the national government weaker then the state governments.

The states and the nation each had their own unique connection to the people, which meant that they each possessed sovereignty, and were equal in a legal sense.   
  
This is true even though the Constitution is called the supreme law. This is only really true when there is a confrontation over a shared power between the two. We will study this more in the section of federalism.

Other disputes involved slavery.  
  
Slaves states would not join the union if slavery was not recognized. Slavery is accepted, though not directly referred to. It is indirectly referred to in three places in the Constitution.

[The 3/5ths Compromise](http://en.wikipedia.org/wiki/Three-fifths_compromise) refers to one of those clauses. While slaves did not have the power to vote, they were counted in the census for apportionment purposes.   
  
There are various aspects to this controversy, but it points out that in electoral matters, the Constitution delegates the bulk of electoral power to the states.

[Article 1, Section 2, Clause 3](http://press-pubs.uchicago.edu/founders/tocs/a1_2_3.html)  
Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

Slavery is also alluded to, but not specifically mentioned, in two other parts of the Constitution.

[Article 1, Section 9, Clause 1](http://press-pubs.uchicago.edu/founders/tocs/a1_9_1.html)  
The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[Article 4, Section 2, Clause 3](http://press-pubs.uchicago.edu/founders/tocs/a4_2_3.html)  
No Person held to Service or [Labour](http://www.usconstitution.net/constmiss.html) in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or [Labour](http://www.usconstitution.net/constmiss.html), But shall be delivered up on Claim of the Party to whom such Service or [Labour](http://www.usconstitution.net/constmiss.html) may be due.

A later compromise would involve the agreement to add a [Bill of Rights](http://en.wikipedia.org/wiki/United_States_Bill_of_Rights) to the document clarifying substantive and procedural limits on the powers of the national government.

The document was signed on [September 17](http://teachingamericanhistory.org/convention/debates/0917.html). Only 39 of the 55 delegates that attended the convention would sign it.  
  
[See a full list here](http://en.wikipedia.org/wiki/List_of_signers_of_the_United_States_Constitution).

Some of those not signing the document were:  
  
[Edmund Randolph](http://en.wikipedia.org/wiki/Edmund_Randolph)  
[Elbridge Gerry](http://en.wikipedia.org/wiki/Elbridge_Gerry)  
[George Mason](http://en.wikipedia.org/wiki/George_Mason)

[Click here](http://www.usconstitution.net/constconart.html) for principle differences between the US Constitution and the Articles of Confederation.

Here is a quick review of the major components of the document.  
  
Here is a link to the finished work: [The United States Constitution](http://en.wikipedia.org/wiki/United_States_Constitution)

For more detail and background, here are helpful online sources for further info from smarter people than me:   
  
- [LOC: Creating the United States Constitution](http://myloc.gov/Exhibitions/creatingtheus/Constitution/Pages/SlObjectList.aspx).  
- [The Constitution: Analysis and Interpretation](http://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002.pdf).

I highly recommend the following as well for historical background related to all aspects of the Constitution:   
  
[The Founder’s Constitution](http://press-pubs.uchicago.edu/founders/tocs/a1_2_3.html)

Just so we know, in addition to the Constitution, the United States has a compilation of laws passed by Congress and signed by the president.   
  
[United States Code](http://uscode.house.gov/download/download.shtml)  
LII – [United States Code](http://www.law.cornell.edu/uscode/)  
Wikipedia ([United States Code](http://en.wikipedia.org/wiki/United_States_Code))

The US Code is where you can find all the laws of the nation.   
  
We will refer to the US Code occasionally – primarily when we discuss public policy - when it is helpful.

Now for a quick walk through the US Constitution.   
  
We will look more carefully at different parts of it in future sections.

Its worth noting before we do so that the document is very brief and in many places vaguely worded.  
  
We will discuss the consequences of this soon.

[The Preamble](http://caselaw.findlaw.com/data/constitution/preamble/)

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence,* *promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

This was a controversial way to begin. The Anti-Federalists wanted to know where the authority had been for the authors to claim that they spoke for the people? The states had sent them to the convention, and it was their authority that made the process legal.

But saying so would have meant that the nation was inferior to the states. This would have defeated the purpose of the entire effort.

The first three articles establish the three separate institutions   
and delegate certain   
powers to Congress.   
  
We will cover these in more detail in future sections.

[Article I - Legislative Department](http://caselaw.findlaw.com/data/constitution/article01/)  
  
This section creates the bicameral congress, and lists the powers of the national government and restricts the powers of the states.

[Article II - Executive Department](http://caselaw.findlaw.com/data/constitution/article02/)  
  
This establishes the singular executive branch and grants its powers, including the power of commander in chief, which was troublesome to the Anti-Federalists. What guarantees existed that the president would not become dictatorial?

[Article III - Judicial Department](http://caselaw.findlaw.com/data/constitution/article03/)  
  
This states that judicial power shall be granted to an appointed court system composed of competent judges that are independent from - not subject to the control of - the other two branches. It also establishes the jurisdiction of the courts.

Then the subject turns to the relations between the states, and the obligations each has to the others and what each is guaranteed from the national government.

[Article IV - States' Relations](http://caselaw.findlaw.com/data/constitution/article04/)   
  
This establishes the relationship between the states, and contains the Full Faith and Credit and Privileges and Immunities clauses.

[Full Faith and Credit](http://en.wikipedia.org/wiki/Full_Faith_and_Credit_Clause)  
  
States have the duty to respect the "public acts, records, and judicial proceedings" of other states.

[Privileges and Immunities](http://en.wikipedia.org/wiki/Privileges_and_Immunities_Clause)  
  
prevents a state from treating citizens of other states in a discriminatory manner, with regard to basic civil rights. The clause also embraces a right to travel, so that a citizen of one state can go and enjoy privileges and immunities in any other state.

[Article V - Mode of Amendment](http://caselaw.findlaw.com/data/constitution/article05/)  
  
This states the various ways that the document can be amendment.

[Article VI - Prior Debts, National Supremacy and Oaths of Office](http://caselaw.findlaw.com/data/constitution/article06/)  
  
This establishes the relationship between the state and national government and contains the supremacy clause.

[Article VII – Ratification](http://caselaw.findlaw.com/data/constitution/article07/)  
  
This states how the constitution was to be ratified.

After it was signed, the document was sent to the Congress of the Articles of Confederation, and they it was sent to the legislatures of the states.

But the document stated that ratification was to happen in state conventions, not the state legislatures. It was assumed that state legislators would see the new constitution as a threat to their positions of power and vote it down. Federalists would be more able to influence who would participate in the conventions and therefore make it more likely it would be ratified.

The fact that the Constitution went through a ratification process means that the document has a closer connection to the people than statutory laws. In Federalist #78 Hamilton argued that this is what made constitutional law superior to statutory law.

[Ratification](http://www.answers.com/topic/ratification-of-the-constitution) was difficult and uncertain. It involved public debate between the [Federalists](http://en.wikipedia.org/wiki/Federalism_in_the_United_States) and [Anti-Federalists](http://en.wikipedia.org/wiki/Anti-Federalism) and it would lead to the writing of the [Federalist Papers](http://en.wikipedia.org/wiki/The_Federalist_Papers) which are regarded as the most important source of explanatory material for the Constitution.

Click here for [a full description of the ratification process](http://teachingamericanhistory.org/ratification/).

Anti-Federalists started attacking the Constitution in print soon after its publication. Collectively their writings are known as the [Anti-Federalist Papers](http://www.thisnation.com/library/antifederalist/index.html). The first were by “[Centinel](http://www.infoplease.com/t/hist/antifederalist/).”  
  
[Constitution Timeline](http://www.usconstitution.net/consttime2.html).

Supporters of the Constitution, led by [Alexander Hamilton](http://en.wikipedia.org/wiki/Alexander_Hamilton), organized rebuttals to these arguments.   
  
He originally wrote under the pseudonym “[Caesar](http://www.infoplease.com/t/hist/federalist/caesar.html).” We read part of this document before. Not the best idea he ever had.

Julius Caesar, as we know, attempted to terminate the republic and place himself as emperor. So was Hamilton claiming to establish an empire?   
  
Critics, even today, argue that he was.

He adjusted his strategy and recruited collaborators to write under the name “Publius.” His collaborators were James Madison and John Jay.

These were the Federalist Papers  
  
They were a series of newspaper editorials, written to the people of New York, arguing in favor of the ratification of the Constitution  
  
- [Wikipedia](http://en.wikipedia.org/wiki/Federalist_Papers).

The name Publius referred to [Publius Valerius Publicola](http://en.wikipedia.org/wiki/Publius_Valerius_Publicola), A Roman Consul who helped establish the Roman Republic, by defeating the last of the kings who had ruled Rome, and drafted its early laws.

Publius was renowned for refusing to become king himself. A consul was a civil and military head of government who served, together with another consul, for a one year term.

Anti-Federalists also used pseudonyms  
  
[Brutus](http://en.wikipedia.org/wiki/Robert_Yates_(politician)) ([the Senator](http://en.wikipedia.org/wiki/Marcus_Junius_Brutus_the_Younger))  
[Cincinnatus](http://teachingamericanhistory.org/library/index.asp?document=1951) ([the General](http://en.wikipedia.org/wiki/Cincinnatus))  
[Cato](http://en.wikipedia.org/wiki/George_Clinton_(vice_president)) ([the Senator](http://en.wikipedia.org/wiki/Cato_the_Younger))

Here is a [list of the pseudonyms used](http://en.wikipedia.org/wiki/List_of_pseudonyms_used_in_the_American_constitutional_debates) in the debates.

In general, the Anti-Federalists argued that the ratification of the Constitution would mark the end, not the beginning, of the American Republic. The names they choose as pseudonyms were often those of Romans opposed to the empire.

[Click here for a summary of their arguments](http://www.usconstitution.net/consttop_faf.html).

The Constitution was barely ratified.  
  
[Ratification Dates and Votes](http://www.usconstitution.net/ratifications.html).

In order to gain the support of the Anti-Federalists. The Federalists agreed to add a [Bill of Rights](http://en.wikipedia.org/wiki/Bill_of_Rights) to the document. Most states had them, and it would guarantee certain further limitations on national power. We will consider these arguments more fully when we read up on the Bill of Rights.  
  
These are the first ten amendments.

[27 amendments](http://en.wikipedia.org/wiki/Amendments_to_the_United_States_Constitution) total have been   
added since ratification,   
including the first 10.   
  
Most involve changes in the design of institutions in the constitution, and expansions of suffrage. [Not all proposed amendments pass](http://en.wikipedia.org/wiki/List_of_proposed_amendments_to_the_United_States_Constitution).

[The Bill of Rights](http://en.wikipedia.org/wiki/United_States_Bill_of_Rights)  
  
 Ten Amendments added at the insistence of the Anti-Federalists. Establishes the liberties of the people by placing additional substantive and procedural limitations on the power of the national, and later – through the 14th Amendment - the state governments.

[Later Amendments](http://en.wikisource.org/wiki/Additional_amendments_to_the_United_States_Constitution)  
  
17 Amendments have been added since the original 10. 5 have expanded suffrage. Most of the rest have deal with structural features of the design of each institution.

Each of these amendments went through a ratification process.   
  
Which was like going through the constitutional ratification process all over again. Here’s a quick look at the changes made by the amendments:

11th Amendment (1794)  
  
Changed constitutional language ([Article 3, Section 2, Clause 1](http://press-pubs.uchicago.edu/founders/tocs/a3_2_1.html)) authorizing the federal government to hear lawsuits private citizens wished to bring against states. This established the concept of [state sovereign immunity](http://en.wikipedia.org/wiki/Sovereign_immunity).

[12th Amendment](http://en.wikipedia.org/wiki/Twelfth_Amendment_to_the_United_States_Constitution) (1804)  
  
This altered the language ([Article 2, Section 1, Clause 3](http://press-pubs.uchicago.edu/founders/tocs/a2_1_2-3.html)) which established the Electoral College.

60 years would pass before any other amendment would be added, then three would be tacked on quickly after the Civil War.

These were the [13th](http://en.wikipedia.org/wiki/Thirteenth_Amendment_to_the_United_States_Constitution) (1865) [14th](http://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution) (1868) and [15th](http://en.wikipedia.org/wiki/Fifteenth_Amendment_to_the_United_States_Constitution) (1870) Amendments.

The 13th outlawed slavery and involuntary servitude. The 14th nationalized citizenship and required states to treat people equally under the law. The 15th denied state the ability to deny the vote to people based on race, color or previous condition of servitude.

Again after a pause – 43 years – a series of amendments would be passed in rapid succession.   
  
Many of these had been promoted by the [Progressive Movement](http://en.wikipedia.org/wiki/Progressivism_in_the_United_States).

[16th Amendment](http://en.wikipedia.org/wiki/Sixteenth_Amendment_to_the_United_States_Constitution) (1913)  
   
This altered the taxation clauses in Article 1 and allowed for the collection of an income tax.

[17th Amendment](http://en.wikipedia.org/wiki/Seventeenth_Amendment_to_the_United_States_Constitution) (1913)  
  
This changed the way Senators were elected to office. Instead of being elected by the state legislatures, they would be elected by the eligible electorate of each state.

[18th Amendment](http://en.wikipedia.org/wiki/Eighteenth_Amendment_to_the_United_States_Constitution) (1919)  
  
This outlawed the manufacture, sale, or transportation of liquor, but not the possession or consumption of it.

[19th Amendment](http://en.wikipedia.org/wiki/Nineteenth_Amendment_to_the_United_States_Constitution) (1920)  
  
States could not longer deny the right to vote on the basis of sex.

[20th Amendment](http://en.wikipedia.org/wiki/Twentieth_Amendment_to_the_United_States_Constitution) (1933)  
  
The beginning and ending of the terms of the President and Vice President and members of Congress is set. Noon January 20th for executive offices; noon January 3rd for legislative offices.

[21st Amendment](http://en.wikipedia.org/wiki/Twenty-first_Amendment_to_the_United_States_Constitution) (1933)   
  
The prohibition on alcohol is repealed.

[22nd Amendment](http://en.wikipedia.org/wiki/Twenty-second_Amendment_to_the_United_States_Constitution) (1951)  
  
Set a two term limit for the office of President.

[23rd Amendment](http://en.wikipedia.org/wiki/Twenty-third_Amendment_to_the_United_States_Constitution) (1961)   
  
Residents of Washington DC can vote for Electors for President and Vice President.

[24th Amendment](http://en.wikipedia.org/wiki/Twenty-fourth_Amendment_to_the_United_States_Constitution) (1964)  
  
Prohibits states and Congress from establishing poll taxes.

[25th Amendment](http://en.wikipedia.org/wiki/Twenty-fifth_Amendment_to_the_United_States_Constitution) (1967)  
  
Clarifies the vague language in the [Article 2, Section 1, Clause 6](http://press-pubs.uchicago.edu/founders/tocs/a2_1_6.html) regarding succession to the Presidency. It is made clear that the Vice President becomes President upon the offices vacancy.

[26th Amendment](http://en.wikipedia.org/wiki/Twenty-sixth_Amendment_to_the_United_States_Constitution) (1971)  
  
Prevented the states and federal government from setting a voting age higher than 18.

[27th Amendment](http://en.wikipedia.org/wiki/Twenty-seventh_Amendment_to_the_United_States_Constitution) (1992)  
  
Originally part of the proposed Bill of Rights, it prohibits Congressional pay raises from taking effect until the start of the next session of Congress.

[Click here](http://en.wikipedia.org/wiki/List_of_proposed_amendments_to_the_United_States_Constitution) for a list of proposed – though failed – amendments.

One of the more famous failures is the [Equal Rights Amendment](http://en.wikipedia.org/wiki/Equal_Rights_Amendment).

Interpreting the Constitution

A central dispute since ratification involves how the document ought to be interpreted.

This is especially problematic given the vague language within the Constitution and the lack of any clear directive regarding how the document should be interpreted.

Here’s a nice quote   
from a noted autocrat.

*A Constitution should be   
short and obscure*.   
  
- [Napoleon Bonaparte](http://en.wikipedia.org/wiki/Napoleon_I)

This makes it subject to change.

A constitution can be long and detailed which prescribes clear limits on governmental power, or it can be brief and vague and allow for expansions of power.

The United States Constitution is written with loose terminology, and “elastic clauses,” which has allowed for expansion.

The U.S. Constitution has 4,400 words. It is the oldest and shortest written Constitution of any major government in the world.  
  
The Texas Constitution, as a contrast, has 80,806 words.

As we will see in future lectures, these phrases include the [“commerce clause,”](http://en.wikipedia.org/wiki/Commerce_Clause) the [“necessary and proper clause,”](http://en.wikipedia.org/wiki/Necessary_and_Proper_Clause), and the [“general welfare” and “taxing and spending”](http://en.wikipedia.org/wiki/Taxing_and_Spending_Clause) clauses.

As we will see in 2306, the Texas Constitution of 1876 is written with highly restrictive language. It has no elastic clauses. Any significant changes must be made with constitutional amendments.

An early dispute about interpretation regarded whether the Constitution [authorized the creation of a national bank](http://en.wikipedia.org/wiki/First_Bank_of_the_United_States).  
  
It was not a delegated power.

Alexander Hamilton argued that such authority rested on the [necessary and proper clause](http://en.wikipedia.org/wiki/Necessary_and_Proper_Clause).  
  
Decades later, Andrew Jackson would argue that it did not.

Battles tend to be waged over how to interpret and apply some of the various clauses in the Constitution.  
  
[The Clauses](http://www.usconstitution.net/constpop.html).

The Necessary and Proper Clause  
  
“The [Congress](http://en.wikipedia.org/wiki/United_States_Congress) shall have Power - To make all Laws which shall be necessary and proper for carrying into Execution the [foregoing Powers](http://en.wikipedia.org/wiki/Enumerated_powers), and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

Ultimately the decision is up to the Supreme Court. They have the power to interpret the document and to use judicial review to overturn legislation they see as violating the Constitution as they interpret it.

*We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our property and our liberty and our property under the Constitution.*  
  
- Charles Evans Hughes

The Supreme Court would ultimately agree with Hamilton.

The court would rule in [McCullough v Maryland](http://en.wikipedia.org/wiki/McCulloch_v._Maryland) (1819) that the necessary and proper clause should be interpreted broadly and that it did authorize a national bank.

The dispute involved whether “necessary and proper” meant useful, or essential.

If the term means “useful” then the powers contained in the clause are expansive, if it means “essential” then the powers are restricted.

The former is a loose reading, the later is strict.  
  
Similar disputes exist over the commerce clause, the general welfare clause and the taxing clause.

Recent disputes over whether the commerce clause authorizes the national government to compel people to purchase health insurance fit into this history.

This leads to an ongoing controversy regarding the Constitution: Should it be interpreted narrowly or broadly?  
  
Loose Construction ([broad](http://www.novelguide.com/a/discover/eamc_01/eamc_01_00307.html))  
[Strict Construction](http://en.wikipedia.org/wiki/Strict_constructionism) (narrow)  
  
[Theories of Constitutional Interpretation](http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/interp.html).

Did the framers have a position on this? Again there is a dispute over whether this was the case, or if it was, if all the framers had the same position on this issue.

Should the document be interpreted in accordance with changes that occur in society or should a hard and fast meaning be adhered to?

This is an important dispute. A loose interpretation allows for expansion of national power. A strict interpretation does not.

There are various schools of thought that have developed concerning how the Constitution ought to be interpreted.  
  
Here are a few

[Textualism](http://en.wikipedia.org/wiki/Textualism)  
[Originalism](http://en.wikipedia.org/wiki/Originalism)  
[The Living Constitution](http://en.wikipedia.org/wiki/Living_Constitution)

We will dig into controversies associated with each in future sections.  
  
Here are some random quotes regarding the constitution to close this section out.

*Do not separate text from historical background. If you do, you will have perverted and subverted the Constitution, which can only end in a distorted, bastardized form of illegitimate government.*  
  
- James Madison

*Our Constitution was not written in the sands to be washed away by each wave of new judges blown in by each successive political wind.*  
  
- Hugo Black

*The United States Constitution has proven itself the most marvelously elastic compilation of rules of government ever written.*  
  
- Franklin Roosevelt

*It is the genius of our Constitution that under its shelter of enduring institutions and rooted principles there is ample room for the rich fertility of American political invention.*  
  
- Lyndon Johnson

The decision regarding whether something is or is not constitutional generally is determined by how many people who subscribe to each means of interpreting the document are on the court.

Battles are regularly fought over nominees to the federal courts based on how they might interpret the Constitution.

Current controversies focus on:   
  
The Commerce Clause – Health Care Reform  
The 14th Amendment – the status of children of immigrants

As we will see in future discussions, the U.S. Constitution’s design is based on a realistic – if negative - assessment of human nature.   
  
It takes people as they are, not as we might want them to be.